

(916) 323-7715

January 7, 1982

This is in response to your December 4, 1981, letter wherein you state that the                      intends to purchase a conservation easement over a property in                      as Ring Mountain, and you ask what effect this would have on property taxes levied against the property

Initially, as I discussed with                      , Revenue and Taxation Code Section 214 (welfare exemption) provides that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by organizations organized and operated for such a purpose or purposes is exempt from property taxation if certain requirements are met. As indicated, ownership as well as use is determinative, as further evidenced by Section 261 of the Code which provides that as a prerequisite to the allowance of the welfare exemption, the interest of the claimant in the property must be of record on the lien date in the office of the recorder of the county in which the property is located.

Since the proposed Grant of Conservation Easement which you forwarded indicates that the                      are to retain legal title to the property, the property would not be eligible for the welfare exemption.\*

You then ask if the conservation easement will be regarded for assessment purposes as a separately assessable real property interest.

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\* Of course, for property to be eligible for the exemption, all the requirements therefor must be met, not just the ownership requirement.

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Revenue and Taxation Code Section 60 provides that "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. And Property Tax Rule 462(a) provides that:

"(1) There shall be a reappraisal of real property as of the date of a change in ownership of that property. The reappraisal will establish a new base year full value and will be enrolled on the lien date following the change in ownership.

"(2) A 'change in ownership' in real property occurs when there is a transfer of a present interest in the property, and a transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a 'change in ownership' shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant...or any other means...."

Given the scope of the conservation easement granted (Paragraph 1 of Grant--all rights and interest in the property except legal title, etc.), and the exclusiveness thereof (Therefore Clause and Paragraph 2 of Grant - exclusive easement in perpetuity running with and burdening title to the property), it is our opinion that the creation of this conservation easement prior to March 1, 1982, would constitute a change in ownership as defined in Section 60 and Rule 462(a), and that such easement should be regarded for assessment purposes as a separately assessable real property interest. As such, a base year value for the conservation easement would be determined for the 1982-83 base year.

You also ask how the taking of the conservation easement will affect the assessment of the underlying fee.

As indicated, the conservation easement should be regarded as a separately assessable real property interest. Since the value of real property is diminished to the extent

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that certain exclusive easements, leases, etc., are granted to others, upon the granting of this conservation easement to the the assessment of the underlying fee would, no doubt, be reduced for the 1982-83 fiscal year.

Very truly yours,

James K. McManigal, Jr.  
Tax Counsel

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